

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

DELBERT MCNEIL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. CIV-07-1415-HE
	)	
BRUCE HOWARD, WARDEN,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner Delbert McNeil, a state prisoner appearing *pro se*, filed this action pursuant to 28 U.S.C. §2254 seeking federal habeas relief from his state misdemeanor conviction for resisting an officer. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred to Magistrate Judge Doyle W. Argo, who recommended that the action be dismissed for lack of subject matter jurisdiction and, in the alternative, that habeas relief be denied on the merits. The court initially adopted the Report and Recommendation based on petitioner's failure to object to the report. Order and Judgment, September 25, 2008 [Doc. Nos. 17 & 18]. Upon later receipt of petitioner's objection, the court vacated its judgment denying relief [Doc. #19] and has now considered petitioner's objections to the report on the merits.<sup>1</sup>

The court concurs in Judge Argo's conclusion that this court lacks jurisdiction to grant the relief petitioner seeks. Although the record in this respect is not complete, no basis appears for concluding that petitioner — who was sentenced to one year in jail on the subject

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<sup>1</sup>The court reviews *de novo* petitioner's objections to the Report and Recommendation. 28 U.S.C. §636(b)(1).

charge, to run concurrently with other charges — is now in custody in connection with the conviction he attacks here or that his present custodial status on other charges is extended or otherwise affected by the conviction here in issue. *See Garlotte v. Fordice*, 515 U.S. 39, 45-46 (1995) (“prisoner serving consecutive sentences is ‘in custody’ under any one of them” for federal habeas corpus purposes); *Wright v. United States*, 116 F.3d 488 (9th Cir. 1997) (unpublished opinion) (“The rationale of *Garlotte* does not extend to cases which involve concurrent sentences”); *Mays v. Dinwiddie*, 2008 WL 3012966, \*2 (N.D. Okla. 2008) (unpublished opinion) (same). As a result, this court lacks jurisdiction to entertain his petition.<sup>2</sup>

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #16] and **DISMISSES** the petition for habeas corpus for lack of jurisdiction.

**IT IS SO ORDERED.**

Dated this 26th day of November, 2008.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>*Although the court need not reach the issue, it also concurs in the Magistrate Judge’s recommendation with respect to the petition on the merits. No basis for habeas relief is shown based on the state court proceedings as to the video tape or by the Magistrate Judge’s review of the tape in connection with this case.*